

**BOARD OF ASSESSMENT APPEALS,  
STATE OF COLORADO**

1313 Sherman Street, Room 315  
Denver, Colorado 80203

**Docket No.: 52784 and  
52785**

Petitioner:

**SUNDOG ENTERPRISES LLC,**

v.

Respondent:

**GARFIELD COUNTY BOARD OF EQUALIZATION.**

**ORDER**

**THIS MATTER** was heard by the Board of Assessment Appeals on September 2, 2010, James R. Meurer and Lyle D. Hansen presiding. Petitioner was represented by Kenneth S. Kramer, Esq. Respondent was represented by Cassie Coleman, Esq. Petitioner is protesting the 2009 land value and classification of the subject properties.

As a preliminary issue, both Petitioner and Respondent stipulated to combining Dockets 52784 and 52785 into one hearing indicating that the issue was the re-classification of both Parcel 5 and Parcel 8.

Both Petitioner and Respondent did not dispute the assigned values on the two parcels by the Garfield County Assessor if the Board finds the classification of the building envelopes should remain vacant residential land.

Subject properties are described as follows:

**Lots 5 & 8, Faranhyll Ranch, Glenwood Springs, Colorado  
Garfield County Schedule Nos. 081005 and 081008**

Parcel 5, Faranhyll Ranch is a land parcel containing a total of 36.307 acres. This parcel has partial natural forest and native grass vegetation on the site. The parcel has a minor structure utilized for equipment storage. The native grass is harvested.

Parcel 8, Faranhyll Ranch is a vacant land parcel containing a total of 35.0 acres. This parcel has natural forest vegetation on site.

Petitioner presented an indicated value of \$88,260.00 for Parcel 5 and an indicated value of \$520.00 for Parcel 8.

Petitioner presented no comparable sales in support of its value conclusion.

Petitioner's witness, Mr. Bruce Shugart testified that the two parcels are a part of a perpetual conservation easement and should be classified and valued as agricultural rather than as residential. Mr. Shugart testified that both parcels were a part of a 440-acre ranch that was placed under a perpetual conservation easement.

Petitioner's Exhibit A was the conservation easement that was recorded at Book 1004, beginning at page 932, in Garfield County, Colorado on December 30, 1996, which stated, in part, the following:

- It is the purpose of this Conservation Easement to preserve the deer and elk migration corridor that traverses the Property, the hayfield, the wildlife habitat and the scenic features of the Property and most of the natural features and open space of the Property while at the same time effecting a limited development of the Property as hereinafter described.
- Prohibited uses and practices include the construction of more than one single family residence, one guest house and other uses and structures typically accessory to residential use in the Building Envelope of each Parcel and the conduct of any business, commercial or industrial enterprise.
- Permitted Uses shall be limited to the conduct of agricultural operations on the Hayfield Area of the Common Parcel Easement areas of the Property and the maintenance of the present irrigation system, roads, and utilities.

Mr. Shugart testified that Parcel 5 has a hay operation on a portion of the site where the native grass is cut and baled by a rancher who was hired by Petitioner to accomplish the hay operation. Mr. Shugart testified that Petitioner receives no income from the rancher for the hay that is harvested. There is an equipment shed located on this portion of the parcel. The remainder of the parcel has natural forest. Mr. Shugart testified that Parcel 8 is covered with natural forest and has an irrigation ditch in one corner. He testified that the land use on both parcels has always been agricultural and that there has been no change to residential use.

Petitioner's Exhibit K presented a portion of the Assessor's Reference Library that presents county assessor guidelines for agricultural use.

The Assessor's Reference Library, Volume 3, Revised 9-09, page 5.20, stated:

“Agricultural land that becomes subject to a perpetual conservation easement shall continue to be valued as agricultural notwithstanding its dedication for conservation purposes; except that, if any portion is used for nonagricultural commercial or residential purposes, that portion shall be valued according to such use, as required by 39-1-103(5)(d), C.R.S. The land shall continue to be valued at

the agricultural land value rather than as market value except for any land that is actually used for nonagricultural commercial or residential uses.”

Petitioner is requesting a 2009 land classification of Agricultural for both Parcel 5 and for Parcel 8.

Respondent presented evidence in Respondent’s Exhibit #1 where it is indicated that both lots have a split value where 30 acres are valued as agricultural use and 5 acres are valued as vacant residential. The reasoning for this procedure was evidenced by the existing conservation easement which allows the construction of no more than one single-family residence and that a building envelope exists on both parcels.

Respondent presented an indicated value of \$308,260.00 for Parcel 5 and an indicated value of \$315,520.00 for Parcel 8.

Respondent presented 11 comparable sales in support of its value conclusion for the 35-acre parcels and 7 comparable sales in support of its value conclusion for the 5-acre building envelopes.

Respondent presented the Declaration of Covenants, Conditions, Restrictions and Easement for Faranhyll Ranch as Respondent’s Exhibit 5. The document was recorded at Book 1004, page 947 in Garfield County on December 30, 1996. This document, under category 2. Parcel Ownership on page 951, a Conservation Easement stated, in part:

- Use of any Parcel and its appurtenances shall be restricted in accordance with the provisions set forth in the Conservation Easement defined and identified in the Recitals section.

Respondent argued that agricultural use is inconsistent with the purposes of the Conservation Easement and is prohibited upon or within the Property or the Common Parcel Easement areas of the properties. Respondent argued that this prohibitive use separates the easement area from the building envelope that results in two separate entities, the easement itself and the building envelope.

Respondent assigned an actual value of \$308,260.00 for Parcel 5 and assigned an actual value of \$315,520.00 for Parcel 8 for tax year 2009.

Petitioner presented sufficient probative evidence and testimony to prove that the subject properties were incorrectly classified and valued for tax year 2009.

The Board concurred with Petitioner that the 2009 subject properties’ classification should be changed to Agricultural.

The Conservation Easement prohibits the construction of more than one single family residence, guest house, or accessory residential use, and, the conduct of any business, commercial or industrial use.

The Board referenced Section 39-1-102(1.6)(a)(III), C.R.S. which defines agricultural land to include:

A parcel of land that consists of at least eighty acres, or of less than eighty acres if such parcel does not contain any residential improvements, and that is subject to a perpetual conservation easement, if such land was classified by the assessor as agricultural land under subparagraph (I) or (II) of this paragraph (a) at the time such easement was granted, if the grant of the easement was to a qualified organization, if the easement was granted exclusively for conservation purposes, and if all current and contemplated future uses of the land are described in the conservation easement. "Agricultural land" under this subparagraph (III) does not include any portion of such land that is actually used for nonagricultural commercial or nonagricultural residential purposes.

The subject parcels are subject to a perpetual conservation easement. The conservation easement states in part:

- It is the purpose of this Conservation Easement to preserve the deer and elk migration corridor that traverses the Property, the hayfield, the wildlife habitat and the scenic features of the Property and most of the natural features and open space of the Property while at the same time effecting a limited development of the Property as hereinafter described.
- Prohibited uses and practices include the construction of more than one single family residence, one guest house and other uses and structures typically accessory to residential use in the Building Envelope of each Parcel and the conduct of any business, commercial or industrial enterprise.
- Permitted Uses shall be limited to the conduct of agricultural operations on the Hayfield Area of the Common Parcel Easement areas of the Property and the maintenance of the present irrigation system, roads, and utilities.

The perpetual conservation easement also states that the parcels are less than 80 acres and contain no residential improvements.

The Board referenced the Assessor's Reference Library, Volume 3, Revised 9-09, page 5.20, which states:

"Agricultural land that becomes subject to a perpetual conservation easement shall continue to be valued as agricultural notwithstanding its dedication for conservation purposes; except that, if any portion is used for nonagricultural commercial or residential purposes, that portion shall be valued according to such use, as required by 39-1-103(5)(d), C.R.S. The land shall continue to be valued at the agricultural land value rather than as market value except for any land that is actually used for nonagricultural commercial or residential uses."

The Board concluded that while one single family residence could be built within a building envelope on either of the subject parcels, this activity has not occurred. The building envelopes on the subject parcels are not actually used for nonagricultural commercial or nonagricultural residential purposes; therefore, those portions of the subject parcels also qualified for agricultural classification.

### **ORDER:**

Respondent is ordered to reduce the 2009 actual value of the subject properties to a total of \$88,960.00 (\$88,350.00 for Parcel 5 and \$610.00 for Parcel 8).

The Garfield County Assessor is directed to change his/her records accordingly.

### **APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

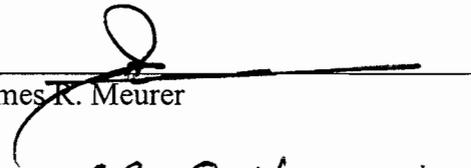
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

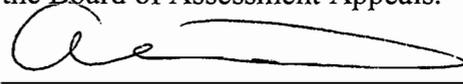
DATED and MAILED this 29 day of December 2010.

**BOARD OF ASSESSMENT APPEALS**

  
James K. Meurer

  
Lyle D. Hansen

I hereby certify that this is a true  
and correct copy of the decision of  
the Board of Assessment Appeals.

  
Amy Bruins

